The Chief Court Regulation Amendment Bill.

PRESIDENT.

The Law Member will introduce the Chief Court Regulation Amendment Bill.

Mr. K. ACHYUTA MENON.

Sir, I beg to move that the Bill to amend the Chief Court Regulation be read in Council.

Mr. T. K. KRISHNA MENON.

Sir, I second it.

Mr. K. ACHYUTA MENON.

There are two amendments now proposed, one with regard to certain appeals under special regulations such as the Insolvency Regulation, the Succession Certificate Regulation, the Nayar Regulation the Guardian and Ward's Regulation and the Probate and Administration Regulation. These appeals under the existing laws—in the case of immovable property, if the valuation exceeds two thousand, and in the case of personal property or money, if the value exceeds three thousand—are heard and determined by Division Courts of 3 Judges. The Judges of the Chief Court consider that appeals under special regulations, may be heard by 2 Judges, there being already a provision for reference to a 3rd Judge. Government thought the suggestions proper, and therefore, have come forward with this amendment of section 16 authorising 2 Judges to hear all appeals under these Regulations, whatever be their valuation. No appeal under the Nayar Regulation has to be heard by a Division Court of three Judges, the maximum amount of compensation in cases of divorce being three thousand rupees.

PRESIDENT.

The maximum is three thousand rupees, so that no appeal will be heard by the three Judges under the Nayar Regulation.

Mr. C. ACHYUTA MENON.

What about partition?

Mr. K. ACHYUTA MENON.

They are decrees under the Civil Procedure Code.

The other amendment proposed is in regard to section 20 of the Chief Court Regulation. It is unhappily worded. As the section now stands, when two Judges hear a case, and they differ even on a very minor point, the case has to go before a third Judge, and irrespective of the opinion of the two Judges, the third Judge is competent to decide it according to his own

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opinion. It is rather anomalous. Is it not advisable, is it not necessary, to amend that section ?

PRESIDENT.

Why should the case be referred to another Judge? That is to say, if the two Judges agree on almost all the points and differ only on a minor matter, is it not enough, if that minor matter alone is referred? But according to the language of the amendment, where two Judges differ in opinion, the case shall be referred to another Judge.

Mr. K. ACHYUTA MENON.

That is the wording in the Civil Procedure Code. The case is referred, and his opinion is also obtained.

PRESIDENT.

So that, the third Judge has to go into the question already decided concurrently by the two Judges.

Mr. K. ACHYUTA MENON.

There will be no necessity, as the decision is to follow the opinion of the majority of the Judges.

PRESIDENT.

He is required only to consider the points of difference.

Mr. V. K. KOCHUNNI MENON.

The amendment is not like that. The case shall be referred to another Judge, and shall be decided according to the opinion of the majority, if any, of all the Judges who have heard it, including those who first heard it. So that, if two Judges agree on a particular point, and the third Judge differs, no weight will be given to his opinion, so that, practically, he won't take the trouble of going into the question. That is the case of the existing section. His decision on the case, whatever may be the decision of the Judges who already took part in the case, will be final. As Mr. Achyuta Menon says, if on one important point they agree, but differ on a minor point, and the third Judge goes into the minor point, he may take a view different from the view of the other two.

Mr. K. ACHYUTA MENON.

Such a contingency is permissible under the existing section where it is said that, where two Judges differ in opinion, each has to record his opinion, and refer the case to another Judge, who delivers his opinion, and the judgment or order follows his opinion. The opinion of the Judges under the proposed amendment shall follow the opinion of the majority of the Judges, and that is, word for word, section 558 of the Civil Procedure Code.

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Mr. V. K. KOCHUNNI MENON.

The provision exists in the Civil Procedure Code. But under it reference is only optional and only on a question of law. But here it is made obligatory. Whether the difference of opinion is on a question of law or of fact, reference is pro-ided.

Mr. M. K. RAMAN.

May I ask one point of doubt? When two Judges have agreed on material points, why should the whole case be re-opened?

PRESIDENT.

Of course, the Judges should follow the language of the Civil Procedure Code. Practically, it will come to this. If it is a point regarding which both the Judges agree, the third Judge won't consider the matter, because, even if he takes a different view, his view will not have weight.

Mr. M. K. RAMAN.

Why should the question be re-opened after discussion?

PRESIDENT.

Why should the case be referred? Is it not enough, if the points of difference be referred?

Mr. K. ACHYUTA MENON.

I am only trying to suggest the reason which prompted the framers of the Civil Procedure Code.

PRESIDENT.

What does that section of the Civil Procedure Code say?

Mr. K. ACHYUTA MENON.

Abstract questions should not be referred. Questions of law should go to the Full Bench That is how we refer cases. In the Madras Act we find that specific points of questions of law alone are referred.

PRESIDENT.

But are we following the language of the Civil Procedure Code?

Mr. K. ACHYUTA MENON.

Word for word, I have copied It is dangerous to change,

PRESIDENT.

That question is only for information. I invite a general discussion on the Bill. Any member wishing to speak may speak.

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Mr. V. K. KOCHUNNI MENON.

I oppose the Bill, so far as section 3 is concerned. Under the existing law all appeals against orders under the special Regulations have to be heard by a bench of three Judges, when the value of the interest involved is over a specified amount, exactly in the same way as regular appeals and miscellaneous appeals under the Civil Procedure Code are heard. The object of the amendment is to make a difference between the two sets of appeals, thereby making the former appeals disposable by a bench of two Judges, while retaining the present law as regards the latter set. I do not know the reason or necessity for making such differentiation. The value of the interests involved in appeals under some of the special Regulations may be as great, and the question involved as important, as in a regular appeal, and generally of a greater importance than in other miscellaneous appeals. (See for instance the orders appealable under the Insolvency Regulation.) There is no reason shown why such a change is desirable or necessary. The objects and reasons given in the Bill only state that the Judges of the Chief Court desire it; but that is no reason at all. Whatever reason exists for directing regular appeals and other miscellaneous appeals of over a certain valuation to be heard by 3 Judges exists in the case of these appeals as well. After all, appeals under these special Regulations are not so numerous as to necessitate relief from the pressure of work by legislation. That this Bill was not introduced after due consideration is evident from the inclusion of even the Nayar Regulation in the section, even though there can be no appeal under that Regulation, which has to be heard by three Judges.

PRESIDENT.

I think no further discussion is required with regard to the motion proposed by Mr. K. Achyuta Menon.

The motion to introduce the Bill to amend the Chief Court Regulation was put to the House and carried by a majority. The Council Secretary read the title of the Bill.

Mr. K. ACHYUTA MNNON.

Though no motion for referring the Bill to a Select Committee is made, the Bill cannot be taken into consideration until the expiry of 15 days from this day.

PRESIDENT.

That is, under Standing Order 32.

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Mr. K. ACHYUTA MENON.

As I do not propose to make any motion to refer any point to a Select Committee, I request the President may, under Standing Order 32, permit me to make the motion at once.

The President permitted the motion to be made after suspending the rule.

Mr. K. ACHYUTA MENON.

Sir, I beg to move that the Chief Court Amendment Regulation be considered in the Council.

Mr. T. K. KRISHNA MENON.

Sir, I second it.

Mr. V. K. KOCHUNNI MENON.

This is a matter which requires greater consideration than what can be given to it now.

PRESIDENT.

Now, clause by clause is to be read in the Council by the President, when you may raise any objections, as provided by Standing Order 41.

Mr. V. K. KOCHUNNI MENON.

Now, my objection is one of principle regarding the proper procedure.

PRESIDENT.

We shall consider that at the proper stage. The members may say if there is anything in the principle embodied in this measure. Then the question may come up as to the reference to the Select Committee. There is not much controversy over this measure. If there were, we would have had to go on minutely, and that cannot be done in the full House. We have only two sections in the Bill itself. Therefore, I have dispensed with the rule as to the lapsing of 15 days.

The Government Advocate's motion that the Chief Court Regulation Amendment Bill be taken into consideration was put to the vote and carried.

PRESIDENT.

I shall now follow the procedure laid down in Standing Order 41. There are only two sections in this Bill. The first is to add clause (e) to section 16 of Regulation II of 1076.

We shall consider this clause.

Mr. K. ACHYUTA MENON.

I want to delete the words "Nayar Regulation" from the clause.

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Mr. A. B. SALEM.

Sir, I rise to move the following amendment:—"*Provided the valuation of the suit of the subject-matter involved in the proceedings does not exceed Rs. 2,000*".

PRESIDENT.

Do you want to make a distinction between movable and immovable property?

Mr. A. B. SALEM.

The party should have the satisfaction that it has been heard. That is what I want.

Mr. V. K. KOCHUNNI MENON.

Sir, I second it.

Mr. K. ACHYUTA MENON.

Now, Sir, with regard to this amendment, it is possible that, under the existing section, appeals, orders, etc., relating to movable property will be heard by two Judges, in case the valuation of the subject-matter is Rs. 3,000 or less. The present amendment provides that all such appeals should be heard by two Judges, only in case the valuation of the subject-matter does not exceed Rs. 2,000. I vehemently object to the amendment. It ought to be thrown out of the House. The existing law should continue even with regard to orders. I strongly object to the amending of the Regulation by reducing the power of two Judges to hear appeals. Besides, bringing an objection to the Bill by way of amendment is not the proper way to proceed in this matter.

Mr. S. S. KODER!

We, laymen, do not understand all these things. We would be very glad, if the Hon'ble Member will be pleased to make us understand the same. Now, as I understand, appeals are heard by two Judges, instead of three Judges.

PRESIDENT.

Mr. Koder wishes to know whether you can throw light upon the principle of two Judges hearing appeals and orders, instead of three Judges.

Mr. K. ACHYUTA MENON.

The Judges of the Chief Court thought that it lightens work.

Mr. A. B SALEM.

If the two Judges differ, then the view of the third Judge is required, to whom it will be referred, and the decision will be according to the majority of the Judges.

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Mr. K. ACHYUTA MENON.

Why? For appeals the subject-matter of which exceed Rs. 3,000, the decision of three Judges is required. It is very difficult to give the reasons for this.

Mr. A. B. SALEM.

It is unreasonable. It is easy for them to dispose of matters.

PRESIDENT.

Your amendment must not override the principles of the Bill. If your amendment is allowed, the sense of the whole Bill itself is appreciably altered.

Mr. C. A. KUNJUNNI RAJA.

First, these are generally regarded as miscellaneous appeals. There is no valuation of the subject-matter. So what is meant by saying that the valuation is not to exceed Rs. 2,000, when there is no valuation at all? For instance, consider the case of Insolvency appeals. In British India there is the Suits Valuation Act. Here there is no such thing.

Mr. K. ACHYUTA MENON.

Orders granting injunctions and others come under this category.

Mr. C. A. KUNJUNNI RAJA.

There is a valuation in the original suit.

Mr. K. ACHYUTA MENON.

There is no rule.

Mr. C A KUNJUNNI RAJA.

I understand that there is no separate valuation given. Take the case of a guardian in the case of a minor. A particular person should be appointed as the guardian. Are we to take into account the whole value of the property? Then we have to introduce the Suits Valuation Act.

PRESIDENT.

In the appointment of a guardian, in the case of a minor, you have to show the approximate value of the property of the minor. No valuation is given in any of the petitions.

Mr. K. ACHYUTA MENON.

In the case of an Insolvency petition, a Receiver is appointed, and we do not value such things. In such cases, where the valuation exceeds Rs. 3,000, the Full Bench sit, and the section specifically provides that, in all appeals under section

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41, the value of the subject-matter should not be ascertained. Even now the practice is going on.

PRESIDENT.

Mr. Salem's amendment I rule out of order.

Mr. V. B. VAIDYANATHA AYYAR.

I beg to move *to delete the words "Nayar Regulation" in section 3*, as suggested by the Law Member. Because, in the case of appeals under the Nayar Regulation, the highest amount of compensation that can be awarded in the case of divorce is Rs. 3,000, and a Division Bench of 2 Judges can dispose of appeals referred against orders involving Rs. 3,000.

Mr. SHEIK ABDUL QADIR SAHIB BAHADUR.

Sir, I second the amendment.

PRESIDENT.

The expression "Nayar Regulation" may be deleted.

Mr. A. B. SALEM.

I wanted to say something on my amendment. To rule out an amendment moved, seconded and discussed! I have not heard of any such practice.

PRESIDENT.

There is nothing clearly stated in the Rules or Standing Orders regarding it. We must follow common-sense. Here, you see, it goes to the root of the Bill. Yours is not an amendment to the section but an amendment to the Bill.

Mr. A. B. SALEM.

I do not controvert that position.

PRESIDENT.

You must allow us discretion to use common-sense.

Mr. V. K. KOCHUNNI MENON.

The expression "Insolvency Regulation" may be deleted. The succession certificates are only to protect the debtor by payment of the amount to the real owner who is entitled to claim the amount.

PRESIDENT.

The question resolves itself into this: the more important matters should require three Judges and less important matters two Judges. Otherwise there is no necessity. I do not mean

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there is no ground for difference of opinion, and the Judges, I think, are supported by the Trichur Bar Association. It is left to the members of the House to entertain their own views on the subject.

The Council then adjourned for lunch, it being 2 p. m. The House re-assembled after an hour. The consideration of the Bill to amend the Chief Court Regulation was resumed.

PRESIDENT.

Section 3 of the Bill to amend the Chief Court Regulation reads thus:—

"*To section 16 of the Regulation II of 1076 add the following as clause (e).*

"*All appeals from orders of a District Court passed under the provisions of the Insolvency Regulation, Succession Certificate Regulation, Nayar Regulation, Guardian and Ward's Regulation and Probate and Administration Regulation.*"

The motion to delete the words "Nayar Regulation" was put to the votes by the President and it was carried.

PRESIDENT.

Any further amendment?

Mr. N. PADMANABHA MENON.

I have one amendment. I move that *section 3 from the amending Bill be omitted.*

PRESIDENT.

So you want a section to be omitted altogether?

Mr. N. PADMANABHA MENON.

Yes, Sir.

Mr. A. B. SALEM.

Sir, I second it.

Mr. N. PADMANABHA MENON.

My reasons are these. There are two standpoints from which that clause can be viewed. One from the view of the Hon'ble Judges of the Chief Court and the other from the standpoint of the public. The only reason advanced, and the only reason that can be conceived, is that, if the old order is retained, there will be pressure of work to the Hon'ble Judges of the Chief Court. The House has been told that it is not so by the member for Ernakulam, who is the leader of the Chief Court Bar. The other standpoint is that of the public. They somehow or other feel confident that justice will be meted out

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better by three Judges hearing an appeal. So to be on the safe side, I believe that it is better to have the old order retained.

PRESIDENT.

I will put the whole section to vote.

Mr. A. B. SALEM.

I do not think any amendment is necessary.

PRESIDENT.

I will, of course, put the whole section, and then, Mr. Padmanabha Menon, those who are in favour of your motion may throw it out.

Mr. A. B. SALEM.

Is it not open to any member to say that a certain section may be omitted ?

PRESIDENT.

You may just point out the reason. The purpose is served by putting the clause to the vote of the House. Should we take it as an amendment ? An amendment, in the strict sense of the term, should be relevant to and within the scope of the subject-matter of the clause to which it relates. I understand the defect. The substantial thing must remain there; and we can only make some subsidiary changes by these amendments. The amendment proposed goes to the very root of the thing. The purpose is served by putting this clause to vote. You say that the section need not form part of the Bill.

Mr. C. ACHYUTA MENON.

It actually negatives the section.

PRESIDENT.

The members of the House have got an opportunity to see that it forms part of the whole Bill.

Mr. A. B. SALEM.

When the question from the Chair is put, that clause may be deleted.

PRESIDENT.

The only difficulty is that we cannot construe it as an amendment. Properly speaking, it will not be an amendment. It involves a substantial change in the proposition before us. Whether it can properly be called an amendment is doubtful.

Mr. A. B. SALEM.

I fully understand the difficulty. My point is: " How is the House to discuss the necessity or otherwise of a particular

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clause in a particular Bill" ? I do not know whether it will not be open to the members to say that it is not to be omitted.

PRESIDENT.

There has been no discussion of the point raised by Mr. Padmanabha Menon. So I must give an opportunity for discussion.

Nobody rose to speak, and so the question was put to votes and carried.

Mr. A. B. SALEM.

A poll, Sir.

PRESIDENT.

Yes.

A poll was then taken. There were 17 for retaining the section and 13 against it.

The following members voted for the retention of section 3 :

Ayes.

1. Sy. T. Madhavi Amma
2. Mr. C. A. Kunjunni Raja
3. ,, C. Achyuta Menon
4. ,, I Rama Menon
5. ,, K. Govinda Menon
6. Rao Sahib Mr. T. V. Kasturi Ranga Ayyar.
7. Mr. P. Damodara Menon
8. ,, K. Krishna Pisharodi
9. ,, K. Achyuta Menon
10. Mr. V. K. Aravindaksha Menon
11. ,, C. Matthai
12. Mr. Sheik Abdul Qadir Sahib Bahadur
13. ,, V. B. Vaidyanatha Ayyar
14. Diwan Bahadur Dr. V. Verghese
15. Dr. A. G. Menon
16. Mr. E. Ekkanda Wariar
17. ,, K. P. Karuppan

Noes.

The following members voted against.—

1. Mr. M. K. Raman
2. ,, T. A. Ramachandra Ayyar
3. ,, K. T. Mathew
4. ,, V. K. Kochunni Menon
5. ,, S. S. Koder
6. ,, S. F. Nunez
7. ,, A. B. Salem
8. Mr. A Kuria Thoma
9. ,, C. A. Ouseph
10. ,, N. Padmanabha Menon
11. ,, M. Krishna Menon
12. ,, O. R. Chummar
13. ,, Chakko Cheruvathur

PRESIDENT.

The next clause to be considered is the amendment to section 20 of the Chief Court Regulation of 1076. It is to the effect that the following shall be substituted :—

"*Where two Judges of a Division Court differ in opinion, the case shall be referred to another Judge and shall be decided according to the opinion of the majority, (if any), of all the Judges who have heard the appeal, including those who first heard it,*"

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"*When there is no such majority which concurs in judgment varying or reversing the decree or order appealed against, such decree or order shall be affirmed.*"

The section was then put to the vote and carried.

Mr. K. ACHYUTA MENON.

Sir, under S. O. 42, I beg to move that the Bill to amend the Chief Court Regulation be taken up and passed at a subsequent meeting of the Council, i. e., on Friday the 23rd instant.

Mr. T. K. KRISHNA MENON.

Sir, I second it.

The motion was then put and agreed to.

Mr. A. B. Salem's Cochin Old Age and Widows' Relief Bill.

PRESIDENT.

Mr. A. B. Salem will introduce the Cochin Old Age and Widows' Relief Bill.

Mr. A. B. SALEM.

Sir, I beg leave to have it adjourned to a subsequent meeting, because I have asked the Government for certain statements as regards the number of persons that would come under the category of persons entitled to these pensions. The Government, I understand, are collecting the necessary statistics, and as there is no great hurry to rush through this Bill, I pray that you would be pleased to adjourn this to a subsequent meeting, and allow me to move it then, after obtaining the statistics, etc., from the Government.

PRESIDENT.

In regard to the adjournment of the consideration of Bills, it seems that they will lapse; if they have not been read in Council. See S. O. No. 4, clause 2.

Mr. A B. SALEM.

So I can have it held over for 2 sessions. I can adjourn it for 2 sessions but not more, so that at the next session I can have it introduced. On the termination of the session, all pending notices shall lapse, and fresh notices will have to be served for the next session.

PRESIDENT.

Can we carry over this Bill to the budget session? "Bills which have been introduced"— these are the words used.

Mr. N. PADMANABHA MENON.

But he has not introduced it.

Mr. A. B. SALEM

I have got leave to introduce it. That is all.

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